

Regular Session, 2009

ACT No. 531

HOUSE BILL NO. 782

BY REPRESENTATIVE ELLINGTON AND SENATOR MURRAY

1 AN ACT

2 To enact R.S. 33:9109.1, relative to communications districts; to provide for intent; to
3 provide for definitions; to provide for collection and remittance of prepaid wireless
4 telecommunications service charge; to provide for the administration of the prepaid
5 wireless service charge; to provide for distribution of funds to communications
6 districts; to provide for issues of liability; to provide for exclusivity of the service
7 charge; to provide an effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 33:9109.1 is hereby enacted to read as follows:

10 §9109.1. Prepaid wireless telecommunications 911 service charge; intent;
11 definitions; collection and remittance; administration; distribution of funds;
12 liability; exclusivity

13 A. Intent. (1) The legislature finds that maintaining effective and efficient
14 911 systems across the state benefits all citizens.

15 (2) Service charges imposed upon the consumers of telecommunication
16 services that have the ability to dial 911 are an important funding mechanism to
17 assist state and local governments with the deployment of enhanced 911 services to
18 the citizens of this state.

19 (3) Prepaid wireless telecommunication services are an important segment
20 of the telecommunications industry and have proven particularly attractive to low-
21 volume consumers.

22 (4) Unlike traditional telecommunication services, prepaid wireless
23 telecommunications services are not sold or used pursuant to term contracts or
24 subscriptions, and monthly bills are not sent to consumers by prepaid wireless
25 telecommunication service providers or retail vendors.

1 (5) Prepaid wireless consumers have the same access to emergency 911
2 services from their wireless devices as wireless consumers on term contracts, and
3 prepaid wireless consumers benefit from the ability to access the 911 system by
4 dialing 911. Therefore, prepaid wireless consumers should begin contributing to
5 funding of the 911 emergency communications system.

6 (6) Consumers purchase prepaid wireless telecommunication services at a
7 wide variety of general retail locations and other distribution channels, not just
8 through service providers. Such purchases are made on a "cash-and-carry" or "pay-
9 as-you-go" basis from retailers.

10 (7) To ensure equitable contributions to the funding of 911 systems from
11 consumers of prepaid wireless telecommunication services, the collection and
12 payment obligation of charges to support E911 should be imposed upon the
13 consumer's retail purchase of the prepaid wireless telecommunication service and
14 should be in the form of a single, statewide charge that is collected once at the time
15 of purchase directly from the consumer, remitted to the state, and distributed to
16 communications districts.

17 B. Definitions. As used in this Section, the following words and terms shall
18 have the following meanings, unless the context clearly indicates otherwise:

19 (1) "Consumer" means a person who purchases prepaid wireless
20 telecommunications service in a retail transaction.

21 (2) "Department" means the Department of Revenue.

22 (3) "E911" means an emergency telephone system that provides the caller
23 with emergency 911 system service, that directs 911 calls to appropriate public
24 safety answering points by selective routing based on the geographical location from
25 which the call originated, and that provides the capability for automatic number
26 identification and other features that the Federal Communications Commission may
27 require in the future.

28 (4) "Prepaid wireless 911 service charge" means the charge that is required
29 to be collected by a seller from a consumer in the amount established under
30 Subsection C of this Section.

1 (5) "Prepaid wireless telecommunications service" means a wireless
2 telecommunications service that allows a caller to dial 911 to access the 911 system,
3 which service shall be paid for in advance and is sold in predetermined units or
4 dollars of which the number declines with use in a known amount.

5 (6) "Provider" means a person that provides prepaid wireless
6 telecommunications service pursuant to a license issued by the Federal
7 Communications Commission.

8 (7) "Retail transaction" means each individual purchase of prepaid wireless
9 telecommunications service from a seller for any purpose other than resale.

10 (8) "Seller" means a person who sells prepaid wireless telecommunications
11 service to another person.

12 (9) "Wireless telecommunications service" means commercial mobile radio
13 service as defined by 47 C.F.R. 20.3, as amended.

14 C. Collection and remittance of prepaid wireless telecommunications 911
15 service charge. (1) There is hereby imposed a prepaid wireless telecommunications
16 911 service charge of two percent of the amount of the per retail transaction.

17 (2) The prepaid wireless 911 service charge shall be collected by the seller
18 from the consumer with respect to each retail transaction occurring in this state. The
19 amount of the prepaid wireless 911 service charge shall be either separately stated
20 on an invoice, receipt, or other similar document that is provided to the consumer by
21 the seller, or otherwise disclosed to the consumer.

22 (3) For purposes of Paragraph (2) of this Subsection, a retail transaction that
23 is effected in person by a consumer at a business location of the seller shall be
24 treated as occurring in this state if that business location is in this state, and any other
25 retail transaction shall be treated as occurring in this state if the retail transaction is
26 treated as occurring in this state for purposes of R. S. 47:301(16)(d).

27 (4) The prepaid wireless 911 service charge shall be the liability of the
28 consumer and not of the seller or of any provider, except that the seller shall be liable
29 to remit all prepaid wireless 911 service charges that the seller collects from
30 consumers as provided in Subsection D of this Section, including all such charges

1 that the seller is deemed to collect where the amount of the charge has not been
2 separately stated on an invoice, receipt, or other similar document provided to the
3 consumer by the seller.

4 (5) The amount of the prepaid wireless 911 service charge that is collected
5 by a seller from a consumer, whether or not such amount is separately stated on an
6 invoice, receipt, or other similar document provided to the consumer by the seller,
7 shall not be included in the base for measuring any tax, fee, surcharge, or other
8 charge that is imposed by this state, any political subdivision of this state, or any
9 intergovernmental agency.

10 D. Administration of prepaid wireless 911 service charge. (1) Prepaid
11 wireless 911 service charges collected by sellers shall be remitted to the department
12 quarterly by the seller and the return for the quarter shall be filed on or before the
13 twentieth day of the first month of the next succeeding quarter. The department shall
14 establish electronic registration procedures to enable sellers to file and pay the
15 prepaid wireless 911 service charges electronically in accordance with R.S.
16 47:1520(A), which authorizes the secretary of the department to mandate electronic
17 filing when the report is required for dedicated fund distribution. Sellers shall be
18 required to file their prepaid wireless 911 service charge reports and to remit the
19 prepaid wireless 911 service charge collection electronically using the electronic
20 format prescribed by the department.

21 (2) A seller shall be permitted to deduct and retain the entirety of the 2010
22 first quarter's fees. Thereafter, a seller shall be permitted to deduct and retain four
23 percent of prepaid wireless 911 service charges that are collected by the seller from
24 consumers.

25 (3) The audit and appeal procedures applicable under Chapter 2 of Title 47
26 of the Louisiana Revised Statutes of 1950 with respect to the state sales tax shall
27 apply to prepaid wireless 911 service charges and prescription shall be governed by
28 Article VII, Section 16 of the Constitution of Louisiana.

29 (4) The department shall establish procedures by which a seller of prepaid
30 wireless telecommunications service may document that a sale is not a retail

1 transaction, which procedures shall substantially coincide with the procedures for
2 documenting sale for resale transactions under Chapter 2 of Title 47 of the Louisiana
3 Revised Statutes of 1950 with respect to the state sales tax.

4 (5) The department shall pay all remitted prepaid wireless 911 service
5 charges over to eligible communications districts in accordance with Subsection E
6 of this Section. The department may retain up to two percent of remitted service
7 charges to reimburse its direct costs of administering the collection and remittance
8 of prepaid wireless 911 service charges.

9 E. Distribution of Funds to Communications Districts. (1) Each
10 communications district shall receive a distribution within thirty days of the end of
11 each calendar quarter of a portion of the revenues remitted to the department under
12 Subsection D of this Section.

13 (2) The amount of the distribution shall be determined by dividing the
14 population of the communications district by the state population, and then
15 multiplying that quotient times the total revenues remitted to the department after
16 deducting the amount authorized in Paragraph (D)(5) of this Section.

17 F. Liability. (1) No provider or seller of prepaid wireless telecommunications
18 service shall be liable for damages to any person resulting from or incurred in
19 connection with the provision of, or failure to provide, 911 or E911 service, or for
20 identifying, or failing to identify, the telephone number, address, location, or name
21 associated with any person or device that is accessing or attempting to access 911 or
22 E911 service.

23 (2) No provider or seller of prepaid wireless telecommunications service
24 shall be liable for damages to any person resulting from or incurred in connection
25 with the provision of any lawful assistance to any investigation or activity by a law
26 enforcement officer of the United States, this or any other state, or any political
27 subdivision of this or any other state, in connection with any lawful investigation or
28 other law enforcement activity by such law enforcement officer.

29 G. Exclusivity of charge. The prepaid wireless E911 charge shall be the only
30 E911 funding obligation imposed with respect to prepaid wireless

1 telecommunications service in this state, and no tax, fee, surcharge, or other charge
 2 shall be imposed by this state, any political subdivision of this state, or any
 3 intergovernmental agency, for E911 funding purposes, upon any provider, seller, or
 4 consumer with respect to the sale, purchase, use, or provision of prepaid wireless
 5 telecommunications service.

6 Section 2. This Act shall become effective on January 1, 2010.

7 Section 3. In the Fiscal Year 2009-2010, the department may retain up to eight
 8 hundred thousand dollars of remitted funds to pay actual start-up costs to implement the
 9 system for collection and remittance of prepaid wireless 911 service charges.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____